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UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY

In Re:) Case No.: 14-14573
GORDON A. WASHINGTON) CHAPTER 13
Plaintiff-Debtor)
- vs. -) ADVERSARY NO.: 14- 01319
SPECIALIZED LOAN SERVICING, LLC)
and THE BANK of NEW YORK MELLON,)
as TRUSTEE for the CERTIFICATE-HOLDERS)
of the CWABS, INC., ASSET-BACKED)
CERTIFICATES, SERIES 2007-5)
Defendants-Creditors)
)

**STATEMENT OF UNDISPUTED
MATERIAL FACTS**

Plaintiff-Debtor, Gordon A. Washington, hereby submits the within statement of undisputed material facts in support of his motion for summary judgment pursuant to Court Rule 56.1. The undisputed material facts are as follows:

1. Plaintiff is Debtor, Gordon A. Washington (hereinafter referred to as “Mr. Washington” or “Homeowner”). Certification of Homeowner dated May 20, 2014, ¶ 1.
2. Mr. Washington filed a voluntary chapter 13 petition on March 12, 2014. Mr. Washington filed this adversary proceeding on March 18, 2014, against The Bank of New York Mellon as the Trustee for the CWABS, Inc. Asset Back Series 2007-5 (hereinafter referred to as

“The Bank of New York”) and Specialized Loan Servicing, LLC (hereinafter referred to as “SLS”), its servicer. Certification of Homeowner dated May 21, 2014, ¶ 2.

3. The adversary complaint seeks judgment declaring that the promissory note and mortgage executed by Mr. Washington in connection with the purchase of his home on February 27, 2007, allegedly held or serviced by Defendants, is unenforceable under the New Jersey Uniform Commercial Code (UCC), *N.J.S.A. 12A:1-101, et. seq.* Certification of Homeowner dated May 21, 2014, ¶ 2.

4. On February 27, 2007 Mr. Washington purchased his three-family home located at 11 Walnut Street, Morris County, New Jersey (hereinafter referred to as the “Property” or the “Home”). Certification of Homeowner dated May 21, 2014, ¶ 4.

5. In connection with the purchase of the property the Homeowner signed a promissory note (hereinafter referred to as the “Promissory Note”) with a lender, America’s Wholesale Lender. Certification of Homeowner dated May 21, 2014, ¶ 5, Exhibit A.

6. In connection with the purchase of the Property, the Homeowner gave a security interest (hereinafter referred to as the “Mortgage”) in the Property to America’s Wholesale Lender. Certification of Homeowner dated May 21, 2014, ¶ 6, Exhibit B.

7. Countrywide® Home Loans was the servicer of the Promissory Note and Mortgage. Certification of Homeowner dated May 21, 2014, ¶ 9.

8. Countrywide® Home Loans declared a default due to non-payment on Promissory Note and accelerated the Promissory Note as of June 1, 2007. Certification of Homeowner dated May 21, 2014, ¶ 12, Exhibit E.

9. On December 14, 2007, The Bank of New York for the Benefit of the Certificateholders, CWABS, Inc. Asset-Backed Certificates Series 2007-5, filed a foreclosure

complaint against Mr. Washington in the Chancery Division, Morris County, New Jersey, under docket number F-34837-07 (hereinafter referred to as the “2007 Foreclosure Complaint”). Certification of Homeowner dated May 21, 2014, ¶ 12, Exhibit E.

10. In the 2007 Foreclosure Complaint The Bank of New York for the Benefit of the Certificateholders, CWABS, Inc. Asset-Backed Certificates Series 2007-5 asserted that it was the present holder Promissory Note. Exhibit E, ¶ 4.

11. The 2007 Foreclosure Complaint states in paragraph 4 that the Promissory Note had been accelerated as of June 1, 2007 and provides as follows:

The defendants named in Paragraphs 1 and 2 above, or their grantee or grantees, if any has failed to make the installment payment due on June 1, 2007, and all payments becoming due thereafter. Therefore the loan has been in default since July 1, 2007, and said payments have remained unpaid for more than 30 days from the date of the mailing of the Notice of Default to the obligor, and are still unpaid. Plaintiff herein, by reason of said default, elected that the whole unpaid principal sum due on the aforesaid obligation

12. In the 2007 Foreclosure Complaint The Bank of New York for the Benefit of the Certificateholders, CWABS, Inc. Asset-Backed Certificates Series 2007-5 asserted that the Mortgage was assigned to it, which Assignment was unrecorded. Exhibit E, ¶ 2a.

13. In the 2007 Foreclosure Complaint proceedings, The Bank of New York for the Benefit of the Certificateholders, CWABS, Inc. Asset-Backed Certificates Series 2007-5 never produced the original Promissory Note, Mortgage or Assignment, or a certified true copy of the original documents by an attorney of the State of New Jersey. Certification of Homeowner dated May 21, 2014, ¶¶ 14, 16, Exhibit G.

14. The Homeowner filed an Answer to the 2007 Complaint filed by The Bank of New York for the Benefit of the Certificateholders, CWABS, Inc. Asset-Backed Certificates Series 2007-5. Certification of Homeowner dated May 21, 2014, ¶ 15, Exhibit F.

15. The application for Final Judgment by The Bank of New York for the Benefit of the Certificateholders, CWABS, Inc. Asset-Backed Certificates Series 2007-5 was rejected by the Office of Foreclosure by Return Notice dated November 28, 2010. Certification of Homeowner dated May 21, 2014, ¶ 17, Exhibit H. The deficiencies in the Return Notice include:

“17. Submit notice and proof of service of notice. R.4:64-1(b)...”

“23. One attorney certified copy of each of the following must be submitted: bond or note, recorded mortgage, assignments, if any....”

“27. Failure to comply with Fair Foreclosure Act (L. 1995, C.244).”

16. The Bank of New York for the Benefit of the Certificateholders, CWABS, Inc. Asset-Backed Certificates Series 2007-5 never obtained a judgment against the Homeowner in the 2007 Foreclosure Complaint. Certification of Homeowner dated May 21, 2014, ¶ 18, Exhibits H, I, K.

17. On May 31, 2013, the Superior Court of New Jersey Office of Foreclosure sent a Notice of Proposed Dismissal to The Bank of New York for the Benefit of the Certificateholders, CWABS, Inc. Asset-Backed Certificates Series 2007-5. Certification of Homeowner dated May 21, 2014, ¶ 19, Exhibit I.

18. The Bank of New York for the Benefit of the Certificateholders, CWABS, Inc. Asset-Backed Certificates Series 2007-5 submitted a Certification in opposition to the Notice of Proposed Dismissal dated June 21, 2013. Certification of Homeowner dated May 21, 2014, ¶ 20, Exhibit J.

19. On July 5, 2013 the Superior Court of New Jersey entered an order dismissing the 2007 Foreclosure Complaint. Certification of Homeowner dated May 21, 2014, ¶ 21, Exhibit K.

20. On August 21, 2013, foreclosure counsel for The Bank of New York filed a Discharge of the Notice of *Lis Pendens* dated August 9, 2013. Certification of Homeowner dated May 21, 2014, ¶ 25, Exhibit N.

21. More than six years have passed since acceleration of the Promissory Note and Assignment of Mortgage. Certification of Homeowner dated May 21, 2014, ¶ 21.

Dated: 6/4/2014

